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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/888,987	06/25/2001	Michael Robert Costello	H0002504	9552

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EXAMINER

VAN BRAMER, JOHN W

ART UNIT	PAPER NUMBER
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3622

DATE MAILED: 10/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/888,987	Applicant(s) COSTELLO ET AL.	
	Examiner John Van Bramer	Art Unit 3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The amendment filed on July 19, 2006 cancelled no claims. No claims were added and Claims 10-15, 21-22, and 25-27 were amended. Thus the currently pending claims remain Claims 1-28.

Claim Rejections - 35 USC § 112

2. The amendment filed on July 19, 2006 corrected the 35 U.S.C. 112 deficiencies identified in the Office Action dated March 15, 2006. Therefore the 35 U.S.C. 112, second paragraph rejection of Claims 10 – 15, 21, 22, 25 and 26 is hereby withdrawn.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1 – 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fishbein (Carpet Take-Back: EPR American Style, Environmental Quality Management, Autumn 2000, pg 25 – 36).

Claim 1. Fishbein discloses a method for recovering carpet comprising polymeric

fibers. While Fishbein does not explicitly disclose that a database is established and maintained that contains information regarding installed carpet and consumers it is obvious to one of ordinary skill in the art at the time the invention was made that a database containing the type of carpet, installation date, useful lifetime of the carpet, and consumer identification would have been necessary in order for Interface to purchase, maintain, replace the carpet over the period of the lease, and recycle it at the end of its useful life. (Page 30, Column 2, lines 39 – 43) One would have been motivated to do this in order to provide the leasing customer with the services that have been promised.

Additionally Fishbein does not explicitly disclose estimating the useful lifetime of the installed carpet, contacting the consumer, or collecting the carpet within a determined period of time from the end of the estimated useful lifetime of the carpet. However, this would have been inherently necessary in order to replace and recycle the carpet at the end of life when the carpet is provided on a leasing arrangement. (Page 30, Column 2, lines 39 – 43)

Fishbein discloses sorting the collected carpet according to polymeric fiber type. (Page 27, Column 2, lines 1 – 17, and Page 28, Column 1, lines 27 – 39)

Fishbein also discloses converting the polymeric fibers into a recovered polymer composition. (Page 28, Column 1, lines 1 – 11)

Claim 2. Fishbein discloses the method of claim 1 further comprising the subsequent step of forming an article from the recovered polymer composition. (Post

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consumer commercial carpet made from the company's nylon 6 fibers is produced)(Page 28, Column 2, lines 13 – 27)

Claim 3. Fishbein discloses the method of claim 1 further comprising the subsequent step of forming polymeric fibers from the recovered polymer composition. (Post consumer commercial carpet made from the company's nylon 6 fibers is produced, in order to produce this carpet new polymeric fibers had to be formed)(Page 28, Column 2, lines 13 – 27)

Claim 4. Fishbein discloses the method of claim 1 further comprising the subsequent step of forming polymeric fibers from the recovered polymer composition and then forming the polymeric fibers into a carpet. (Post consumer commercial carpet made from the company's nylon 6 fibers is produced)(Page 28, Column 2, lines 13 – 27)

Claim 5. Fishbein discloses the method of claim 1 wherein step of converting the polymeric fibers into a recovered polymer composition comprises depolymerizing at least one type of polymeric fiber into its monomeric components. (Depolymerization was used) (Page 28, Column 2, lines 13 – 27)

Claim 6. Fishbein discloses the method of claim 1 wherein step of converting the polymeric fibers into a recovered polymer composition comprises depolymerizing at

least one type of polymeric fiber into its monomeric components and then repolymerizing the monomeric components to form the recovered polymer composition. (Post consumer commercial carpet made from the company's nylon 6 fibers is produced, in order to produce this carpet new polymeric fibers had to be formed)(Page 28, Column 2, lines 13 – 27)

Claim 7. Fishbein discloses the method of claim 6 further comprising the subsequent step of forming an article from the recovered polymer composition. (Post consumer commercial carpet made from the company's nylon 6 fibers is produced)(Page 28, Column 2, lines 13 – 27)

Claim 8. Fishbein discloses the method of claim 6 further comprising the subsequent step of forming fibers from the recovered polymer composition. (Post consumer commercial carpet made from the company's nylon 6 fibers is produced)(Page 28, Column 2, lines 13 – 27)

Claim 9. Fishbein discloses the method of claim 6 further comprising the subsequent step of forming fibers from the recovered polymer composition and then forming the fibers into a carpet. (Post consumer commercial carpet made from the company's nylon 6 fibers is produced)(Page 28, Column 2, lines 13 – 27)

Claim 10. Fishbein discloses the method of claim 1 wherein the converting step

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comprises depolymerizing a nylon polymeric fiber into its monomeric components.

(Post consumer commercial carpet made from the company's nylon 6 fiber is produced)(Page 28, Column 2, lines 13 – 27)

Claim 11. Fishbein discloses the method of claim 1 wherein the converting step comprises depolymerizing a nylon 6 polymeric fiber into its monomeric components.

(Post consumer commercial carpet made from the company's nylon 6 fiber is produced)(Page 28, Column 2, lines 13 – 27)

Claims 12, 21 and 25: Fishbein discloses the methods of claim 1, 17 and 23 respectively. While Fishbein is silent with regard to establishing and maintaining a database conducted via a global computer network, Official Notice is taken that the use of distributed databases is old and well known. Many companies, including carpet retailers have used distributed databases to maintain customer records. Carpet One and CarpetMax are two well known examples of national carpet retailers that utilize such databases to communicate between various retail locations. It would have been obvious to one of ordinary skill in the art to utilize a distributed database over a network in order to consolidate customer information. One would have been motivated to do so in order to provide personalized service and maintenance to customers regardless of the retail location at which they decide to visit.

Claims 13 and 22: Fishbein discloses the methods of claim 1 and 17 respectively.

While Fishbein is silent with regard to how the customer is contacted in order to maintain and replace the leased carpet (Page 30, Column 2, lines 39 – 43), Official notice it taken that contacting customers by mail, telephone, telefax, and electronic mail are all old and well-known business practices. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to contact the customer via one of these methods. One would have been motivated to do this in order to set up an appointment to replace or maintain the customer's carpet.

Claim 14. Fishbein discloses the method of claim 1 further comprising the step after step c) of providing the consumer with a replacement carpet. (Page 30, Column 2, lines 39 – 43)

Claim 15. Fishbein discloses the method of claim 1. While Fishbein is silent with regard to installing the carpet at the consumer's location it does disclose purchasing, leasing and maintaining the carpet. It would have been obvious to one of ordinary skill in the art at the time of the invention that the step of installing the carpet is an integral step in the leasing process. Furthermore it would have been obvious to one of ordinary skill in the art at the time of the invention that the carpet would have to be installed in order to perform the step of maintaining the carpet (Page 28, Column 2,

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lines 13 – 27). One would have been motivated to perform the installation step in order to entice customers to participate in the leasing arrangement.

Claim 16. Fishbein discloses the method of claim 1 further comprising providing the consumer with an incentive to replace the carpet. (The disclosure that “Most of the voluntary take-back programs are not free” indicates that there are a couple of these programs that are free. Since the standard procedure is to charge a customer for the disposal of carpet in a landfill, offering such a take-back service that is free is an economic incentive to the customer) (Page 35, Column 1, lines 33 – 46)

Claim 17. Fishbein discloses a method for recovering carpet comprising polymeric fibers.

While Fishbein is silent with regard to installing the carpet at the consumer’s location it does disclose purchasing, leasing and maintaining the carpet. It would have been obvious to one of ordinary skill in the art at the time of the invention that the step of installing the carpet is an integral step in the leasing process.

Furthermore it would have been obvious to one of ordinary skill in the art at the time of the invention that the carpet would have to be installed in order to perform the step of maintaining the carpet (Page 28, Column 2, lines 13 – 27). One would have been motivated to perform the installation step in order to entice customers to participate in the leasing arrangement.

While Fishbein does not explicitly disclose that a database is established and maintained that contains information regarding installed carpet and consumers it is obvious to one of ordinary skill in the art at the time the invention was made that a database containing the type of carpet, installation date, useful lifetime of the carpet, and consumer identification would have been necessary in order for Interface to purchase, maintain, replace the carpet over the period of the lease, and recycle it at the end of its useful life. (Page 30, Column 2, lines 39 – 43) One would have been motivated to do this in order to provide the leasing customer with the services that have been promised.

Additionally Fishbein does not explicitly disclose estimating the useful lifetime of the installed carpet, contacting the consumer, or collecting the carpet within a determined period of time from the end of the estimated useful lifetime of the carpet. However, this would have been inherently necessary in order to replace and recycle the carpet at the end of life when the carpet is provided on a leasing arrangement. (Page 30, Column 2, lines 39 – 43)

Fishbein discloses sorting the collected carpet according to polymeric fiber type. (Page 27, Column 2, lines 1 – 17, and Page 28, Column 1, lines 27 – 39)

Fishbein discloses depolymerizing the polymeric fibers into their monomeric components. (Post consumer commercial carpet made from the company's nylon 6 fiber is produced)(Page 28, Column 2, lines 13 – 27)

Fishbein discloses repolymerizing the monomeric components to form a recovered polymer composition. (Post consumer commercial carpet made from the company's nylon 6 fibers is produced)(Page 28, Column 2, lines 13 – 27)

Fishbein discloses forming fibers from the recovered polymer composition, and then forming the fibers into a carpet. (Post consumer commercial carpet made from the company's nylon 6 fibers is produced)(Page 28, Column 2, lines 13 – 27)

Claim 18. Fishbein discloses the method of claim 17 wherein the polymeric fibers comprise at least one nylon. (Post consumer commercial carpet made from the company's nylon 6 fiber is produced)(Page 28, Column 2, lines 13 – 27)

Claim 19. Fishbein discloses the method of claim 17 further comprising providing the consumer with an incentive to replace the carpet. (The disclosure that "Most of the voluntary take-back programs are not free" indicates that there are a couple of these programs that are free. Since the standard procedure is to charge a customer for the disposal of carpet in a landfill, offering such a take-back service that is free is an economic incentive to the customer) (Page 35, Column 1, lines 33 – 46)

Claim 20. Fishbein discloses the method of claim 17 further comprising providing the consumer with a replacement carpet. (Page 30, Column 2, lines 39 – 43)

Claim 23. Fishbein discloses a method for recovering carpet comprising nylon polymeric fibers.

While Fishbein does not explicitly disclose that a database is established and maintained that contains information regarding installed carpet and consumers it is obvious to one of ordinary skill in the art at the time the invention was made that a database containing the type of carpet, installation date, useful lifetime of the carpet, and consumer identification would have been necessary in order for Interface to purchase, maintain, replace the carpet over the period of the lease, and recycle it at the end of its useful life. (Page 30, Column 2, lines 39 – 43) One would have been motivated to do this in order to provide the leasing customer with the services that have been promised.

Additionally Fishbein does not explicitly disclose estimating the useful lifetime of the installed carpet, contacting the consumer, or collecting the carpet within a determined period of time from the end of the estimated useful lifetime of the carpet. However, this would have been inherently necessary in order to replace and recycle the carpet at the end of life when the carpet is provided on a leasing arrangement. (Page 30, Column 2, lines 39 – 43)

Fishbein discloses sorting the collected carpet according to polymeric fiber type. (Page 27, Column 2, lines 1 – 17, and Page 28, Column 1, lines 27 – 39)

Fishbein discloses depolymerizing at least one type of nylon polymeric fiber into its monomeric components. (Post consumer commercial carpet made from the company's nylon 6 fibers is produced)(Page 28, Column 2, lines 13 – 27)

Fishbein discloses repolymerizing the monomeric components to form a recovered polymer composition. (Post consumer commercial carpet made from the company's nylon 6 fibers is produced)(Page 28, Column 2, lines 13 – 27)

Fishbein discloses forming nylon fibers from the recovered polymer composition, and then forming the fibers into a carpet. (Post consumer commercial carpet made from the company's nylon 6 fibers is produced)(Page 28, Column 2, lines 13 – 27)

Claim 24. Fishbein discloses the method of claim 23 wherein the nylon polymeric fibers comprises nylon 6. (Page 28, Column 2, lines 13 – 27)

Claim 26. Fishbein discloses the method of claim 23 further comprising the step after the contacting step of providing the consumer with a replacement carpet. (Page 30, Column 2, lines 39 – 43)

Claim 27. Fishbein discloses the method of claim 23. While Fishbein is silent with regard to installing the carpet at the consumer's location it does disclose purchasing, leasing and maintaining the carpet. It would have been obvious to one of ordinary skill in the art at the time of the invention that the step of installing the carpet is an

integral step in the leasing process. Furthermore it would have been obvious to one of ordinary skill in the art at the time of the invention that the carpet would have to be installed in order to perform the step of maintaining the carpet (Page 28, Column 2, lines 13 – 27). One would have been motivated to perform the installation step in order to entice customers to participate in the leasing arrangement.

Claim 28. Fishbein discloses the method of claim 23 further comprising providing the consumer with an incentive to replace the carpet. (The disclosure that “Most of the voluntary take-back programs are not free” indicates that there are a couple of these programs that are free. Since the standard procedure is to charge a customer for the disposal of carpet in a landfill, offering such a take-back service that is free is an economic incentive to the customer) (Page 35, Column 1, lines 33 – 46)

Response to Arguments

5. Applicant's arguments filed July 19, 2006 have been fully considered but they are not persuasive.
 - a. The applicant argues that Fishbein does not disclose sorting the collected carpet according to polymeric fiber. The applicant's argument is based upon a mischaracterization of the passage cited by the examiner. Page 27, Col 2, lines 1-17 specifically states that Honeywell and BASF make Nylon 6 and that Dupont makes Nylon 6,6. It also states that these fibers may require different recycling processes. Therefore, it would have been

obvious to sort the carpet by fiber type in order to prepare them for recycling.

- b. The applicant argues that it would not have been obvious that the carpet would have to be installed in order to perform the step of maintaining the carpet. The applicant alleges that, since the Fishbein discloses that the replacement carpet need not be a BASF product, but could be made by any manufacturer, the entity maintaining the carpet is not necessarily the same entity as the one that installed the carpet. The applicant seem to have misinterpreted a statement of obviousness with one of inherency, since it is obvious for the Fishbein statement that the two entities could be the same.
- c. The applicant argues with the examiners interpretation of the term incentive as applied to the Fishbein reference. The applicant's specification defines incentive so broadly as to encompass the free take-back program disclosed in Fishbein since the customer is receiving an economic benefit by not being burdened with the time and expense of disposing of the carpet themselves.
- d. The applicant's arguments regarding Obviousness predicated on inherency is flawed. In order to create a lease contract, for a consumer good such as carpet, a determination must be made regarding the length of time in which the lease will be valid, what happens to the carpet when the lease expires and to whom the lease is be made with. The estimation

of the useful life is considered to be the lease term, which is therefore inherent. The customer must be contacted in order to sign the lease therefore this too is inherent. Collecting the leased carpet is also inherent based upon the fact that Fishbein is recycling the leased carpet. The examiner's statement of inherency is therefore correct and obviousness has not been predicated on what is not known at the time the invention was made. The motivation statements supplied by the examiner are not directed towards these inherent characteristics since they are already present in the Fishbein reference. Instead the motivational statements used by the examiner are specific to the limitation(s) described in the paragraph in which they reside.

- e. The applicant's argument regarding the basis of fact and/or technical reasoning provide by the motivational statement of obviousness falling short of the requirement when describing the inclusion of a database in order to provide the leasing customer with the services that have been promised. The examiner asserts that a database can be a manual database (filing cabinet, notebook, etc), or an electronic database, and that one of ordinary skill in the art would realize that a record of some sort would be necessary to provide the services guaranteed in the lease agreement.
- f. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be

recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

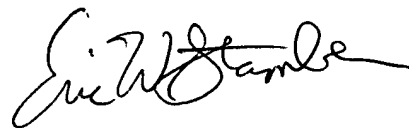
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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Van Bramer whose telephone number is (571) 272-8198. The examiner can normally be reached on 6am - 4pm Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jvb



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